



# Terms of Use

Pilot Analytics Inc.

Updated May 1, 2018

Revision 4



## 1. General

1.1. These General Terms and Conditions of Service ("T&C") together with the Service Order and any Additional Terms (as defined in the Service Order), if any, constitute the entire "Agreement" between the parties. This Agreement shall govern Customer's access to and use of the Site (as defined below) and the Pilot products and services purchased by Customer as listed in the Service Order (collectively, "Pilot Services"). The Pilot Services are provided by Pilot Analytics Inc. ("Pilot") and its third party providers, as applicable, on and through the domain and sub-domains of [www.pilotmovies.com](http://www.pilotmovies.com) (collectively, the "Site").

1.2. In order to use the Services, Customer must first agree to the T&C. Customer may not use the Services if it does not accept the T&C. Customer can accept the T&C by: (i) clicking to accept or agree to the Agreement, where this option is made available to Customer by Pilot in the user interface for any Service; or (ii) by actually using the Services. In this case, Customer understands and agrees that Pilot will treat Customer use of the Services as acceptance of the Agreement (the T&C, together with the Service Order and any Additional Terms, if any), from that point onwards.

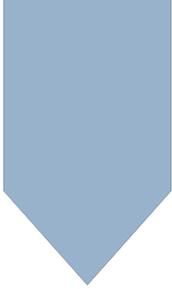
1.3. Customer may not use the Services and may not accept the Terms if Customer is a person or entity barred from receiving the Services under the laws of the United States or other countries including the country in which Customer is resident or from which Customer uses the Services.

1.4. To the extent of any inconsistency between the T&C, Additional Terms and the Service Order, the Additional Terms shall control, followed by the T&C and then the Service Order, unless otherwise agreed by the parties.

## 2. Right of Use

2.1. Customer is obligated to access and use the Site and the Pilot Services, and any content accessed by or provided therein, in accordance with all applicable laws, rules and regulations and agrees to accept Pilot's privacy policy, located at <http://www.pilotmovies.com/docs/privacy.pdf>. Pilot reserves the right to make changes to its policies and the Site at any time.

2.2. Subject to the terms and conditions of the Agreement, Pilot shall grant Customer a non-exclusive and non-transferable right to permit the number of Customer accounts specified in the Service Order to use the Pilot Services for internal purposes. This does not include performance of services for the benefit of third parties, nor use by Customer's affiliated companies. Customer shall be authorized to engage external consultants as users of the Pilot Services on the premise of appropriate contractual agreements and to the extent that they will use the Pilot Services exclusively for the Customer.



2.3. Customers who are marketing or public relations agencies may use the Pilot Services on behalf of their clients but only if all of the following conditions are met: (i) Customer agrees that Pilot and its licensors and/or providers are not parties to the agreement between Customer and its client; (ii) Customer's payment obligations pursuant to this Agreement are not dependent upon receiving payment from Customer's clients; (iii) Customer must first obtain its client's consent authorizing Customer to provide client information as necessary for Pilot to perform under this Agreement; and (iv) the agreement between Customer and its clients is at least as restrictive and protective of Pilot's and its licensors' and/or its providers' rights as this Agreement. Customer shall be solely responsible for and shall comply with all laws, rules, regulations and directives in delivering and providing the Customer's agency services, including but not limited to, any laws regarding privacy and the use and disclosure of personal data and any advertising and/or marketing laws.

### **3. Site Prerequisites**

3.1. Customer shall be responsible for obtaining and maintaining all hardware, software, communications equipment and network infrastructures required to access and use the Site and the Pilot Services, and for paying all third-party fees and access charges incurred while using the Pilot Services.

### **4. Passwords and Account Information**

4.1. Customer's Authorized Users will receive a password to log in to the Site and access the Pilot Services. Customer shall have sole responsibility for all activities relating to such account(s) and shall immediately inform Pilot of any unauthorized use of the Authorized User account(s).

### **5. Third Party Sites and Content**

5.1. Pilot Services may include links to third party websites ("Third Party Sites"). Customer is responsible for evaluating whether to access or use a Third Party Site and agrees to be bound by any applicable terms found therein. Pilot does not screen, audit or endorse any Third Party Site. Pilot shall not assume any responsibility for the content, advertising, products or other materials ("Third-Party Content") on Third Party Sites. Customer agrees it will not copy, reproduce, distribute, transmit, broadcast, modify, display, sell, license or otherwise exploit Third Party Content except in strict compliance with the rights, if any, granted to Customer by any third party. Customer warrants that all content uploaded and distributed via the Pilot Services by Customer shall comply with all applicable law.

## 6. Invoicing and Customer Payment

6.1. Customer will be electronically invoiced full amount due as per Payment Terms in the Service Order. Customer shall pay all invoices within fourteen (14) days after the invoice date. Except as provided in Section 6.4 below, payment obligations are non-cancellable and all fees paid by Customer are non-refundable. Customer will be responsible to update their billing contact as needed.

6.2. Unless otherwise stated, Pilot's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales and use, or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchase of Pilot Services. If Pilot has the legal obligation to pay or collect Taxes for which Customer is responsible, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Pilot with a valid tax exemption certificate from the appropriate taxing authority.

6.3. If Customer is in breach of this Section, Pilot shall be entitled to charge default interest on the outstanding fees in the maximum amount allowable by law and/or suspend or terminate access to the Pilot Services at its sole option, with or without notice to Customer. Additional claims for payment default remain reserved.

6.4. In the event Pilot materially breaches this Agreement, and such breach remains uncured for a period of thirty (30) days after notice from Customer, Customer shall be entitled to a pro-rata refund for the portion of the then-current term that has been pre-paid and is subject to the material breach and remains uncured.

## 7. Duration and Cancellation

7.1. The Agreement shall commence on the date specified in the Service Order and shall continue for the initial term as stated therein, unless earlier terminated in accordance with the Agreement. Thereafter, the Agreement will be extended automatically for periods of time equivalent to the initial term or the then-current renewal term at Pilot's then-current prices and subject to the terms of this Agreement, unless the Agreement is cancelled in writing at least sixty (60) days prior to the expiration of the initial term or the then-current renewal term. Any initial pricing and/or payment terms shall only be applicable to the initial term.

7.2. A timely cancellation according to Section 7.1 will become effective as of the end of the respective term. Upon expiration or termination of the Agreement, Customer's access rights and all other rights granted under this Agreement shall expire. Termination of the Agreement shall not act as a waiver of any breach of the Agreement and shall not release a party from any

liability for breach of such party's obligations under the Agreement that occurred prior to the effective date of termination.

7.3. In addition to other rights and remedies available to Pilot, Pilot is entitled to cancel the Agreement without notice if Customer violates essential or material obligations under the Agreement. Pilot also reserves the right to cancel the Agreement without notice if a substantial decline in the asset situation of Customer occurs, if insolvency proceedings are opened for the assets of Customer or if such proceedings are rejected due to lack of assets.

7.4. The following Sections shall survive the expiration, termination or cancellation of the Agreement in full force and effect: General, Third Party Sites and Content, Intellectual Property, Data Use and Restrictions, Limitation of Liability/Warranty, and Additional Provisions.

## **8. Intellectual Property**

8.1. Customer acknowledges and agrees that Pilot (or Pilot's licensors) own all legal right, title and interest in and to the Services, including any intellectual property rights which subsist in the Services (whether those rights happen to be registered or not, and wherever in the world those rights may exist). Customer further acknowledges that the Services may contain information that is designated confidential by Pilot and that Customer shall not disclose such information without Pilot's prior written consent. Customer and Pilot grant each other the right to use their respective trademarks or logos for marketing purposes only, and not in any way that is likely or intended to cause confusion about the owner or authorized user of such trademarks or logos. For more information regarding confidentiality, please see the Pilot privacy policy.

8.2. Customer may not use this license to build a competing product of similar nature or use any of the confidential algorithms or practices explained to Customer during the sales process or use of this product.

## **9. Data Use and Restrictions**

9.1. The rights granted to Customer under this Agreement do not include any resale of any portion of the Site or its contents; any collection and use of any derivative of the Site or its contents; any downloading or copying of account information for the benefit of another company or party; or any use of data mining, robots, or similar data gathering and extraction tools. The Site or any portion of the Site may not be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any purpose inconsistent with the limited rights granted to Customer under this Agreement. Customer may not frame or utilize framing techniques to enclose Pilot generated content of the Site. Pilot shall in no way be responsible or liable for unauthorized use or disclosure of personal information by the Customer.

## 10. Limitation of Liability/Warranty

10.1. To the maximum extent permitted by applicable law, either party's total, aggregate liability arising out of or in connection with this Agreement shall in no event exceed the total amount of payments due by Customer to Pilot during the initial term or the then applicable renewal term of the Agreement.

10.2. To the maximum extent permitted by applicable law, in no event shall either party be liable for any, indirect, incidental, special, consequential or exemplary damages, however caused and under any theory of liability arising out of or in connection with this Agreement. This shall include, but not be limited to, any loss of; profit, goodwill or business reputation, any loss of data suffered, cost of procurement of substitute goods or services, or other intangible loss.

10.3. Pilot warrants that it has the legal power and authority to enter into this Agreement. Except as provided herein, Customer expressly understands and agrees that Pilot provides the Site "as is" and "as available" without any warranty or condition of any kind, express or implied. In particular, Pilot, its subsidiaries and affiliates, and its licensors, do not represent or warrant to Customer that: (i) Customer use of the Services will meet its requirements, (ii) Customer use of the Services will be uninterrupted, timely, secure, or error-free, (iii) any information accessed on or through the Site will be accurate, complete, suitable, or reliable, and (iv) that defects in the operation or functionality of Services provided to you will be corrected. No information obtained from Pilot or through the Site, whether oral or written, shall create any warranty not expressly stated in this Agreement.

## 11. Operating Hours and System Maintenance

11.1. Pilot shall use commercially reasonable efforts to ensure that the Customer receives uninterrupted and continuing service throughout the term of the Agreement.

11.2. Notwithstanding Section 11.1, Pilot may need to carry out routine maintenance or urgent maintenance or the Pilot Services may become unavailable for reasons not within Pilot's control. In such case, Pilot shall use commercially reasonable efforts to inform the Customer of any downtime and restore the Pilot Services as soon as reasonably practicable. In the event Pilot fails to use commercially reasonable efforts and the Pilot Services remain unavailable to Customer for more than three (3) business days of Customer first notifying Pilot of such unavailability, Pilot will issue to Customer a credit in an amount equal to the pro-rated charges of one day's usage fees for every day that the Pilot Services are unavailable for the Customer.

## 12. Additional Provisions

12.1. The Agreement will be governed by and interpreted in accordance with the laws of Delaware. To the extent allowed by law, Customer irrevocably agrees all disputes arising out of or in connection with this Agreement shall be finally settled by binding arbitration under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The place of arbitration shall be Boston, Massachusetts. Judgment upon any award(s) rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator is authorized to include in the award an allocation to any party of such costs and expenses, including reasonable attorneys' fees, as the arbitrator shall deem reasonable.

12.2. A party's waiver of a breach or default by the other party of any provision of the Agreement shall not be construed as a waiver of any succeeding breach or default by the other party, nor shall a party's failure to exercise or enforce any right or provision of the Agreement be deemed to be a waiver of such right or provision.

12.3. Invalidity of any specific provision of this Agreement shall not affect the validity of the remaining provisions. Any invalid provision shall be replaced by a valid provision that comes as close as possible to the intent of the invalid provision. The remaining provisions of the Agreement will continue to be valid and enforceable.

12.4. Neither this Agreement nor any obligation or right hereunder may be assigned or transferred by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that both parties may assign this Agreement in whole without the other party's prior consent to a successor in interest in connection with a merger, acquisition or sale of all or substantially all of its assets to which this Agreement relates on condition that such successor in interest agrees in writing to comply with all terms and conditions of this Agreement.

12.5. Both parties acknowledge and agree that this Agreement constitutes the entire agreement between the parties in regards to the subject matter herein. Any other terms and conditions, including, without limitation, terms and conditions on or attached to a purchase order, vendor registration documents, tenders or request for proposals, are void and shall be of no force and effect regardless of whether they are delivered to Pilot prior to, concurrently, or after the execution of this Agreement. Performance by Pilot with respect to the Pilot Services shall not constitute acceptance of any additional or alternative terms and conditions nor shall a failure to act on said additional terms and conditions constitute acceptance of the provisions contained therein.

12.6. This Agreement may only be amended in writing signed by authorized representative of both parties.

12.7. Customer and Pilot agree that notices may be sent by electronic mail, to the electronic mail address indicated on the Service Order, or then-current electronic mail address provided by a party to the other party and designated as the proper electronic mail address, and agree that notices are deemed received forty-eight (48) hours after transmission. Each party agrees that any electronic communication will satisfy any legal communication requirements, including all such communication required by applicable laws to be in writing.